House of Representatives



General Assembly

File No. 637

February Session, 2018

Substitute House Bill No. 5429

House of Representatives, April 23, 2018

The Committee on Finance, Revenue and Bonding reported through REP. ROJAS of the 9th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

AN ACT CONCERNING THE DEPARTMENT OF REVENUE SERVICES' RECOMMENDATIONS FOR INCREASED PENALTIES FOR CERTAIN CIGARETTE AND TOBACCO TAX VIOLATIONS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

- Section 1. Section 12-285c of the general statutes is repealed and the following is substituted in lieu thereof (*Effective July 1, 2018*):
- 3 (a) No person engaged in the business of selling cigarettes shall ship 4 or transport or cause to be shipped or transported any cigarettes to any
- 5 person in this state except to: (1) A cigarette distributor or dealer; (2) an
- 6 export warehouse proprietor pursuant to Chapter 52 of the Internal
- 7 Revenue Code of 1986, or any subsequent corresponding internal
- 8 revenue code of the United States, as amended from time to time,
- 9 [amended,] or an operator of a customs bonded warehouse pursuant
- to 19 USC 1311 or 1555; or (3) a person who is an officer, employee or
- 11 agent of the United States Government, this state or a department,
- 12 agency, instrumentality or political subdivision of the United States or

of this state, when such person is acting in accordance with such person's official duties. Notwithstanding the provisions of section 12-15, the Commissioner of Revenue Services shall publish on the Internet web site of the Department of Revenue Services a list of every cigarette distributor or dealer. As used in this subsection, "cigarette distributor or dealer" means a person licensed as a cigarette distributor under section 12-288 or licensed as a dealer under section 12-287 or a person whose name appears on a list of licensed distributors and dealers published by the Commissioner of Revenue Services.

- (b) No common or contract carrier shall knowingly transport cigarettes to a residential dwelling or to any person in this state who the common or contract carrier reasonably believes is not a person described in subdivisions (1) to (3), inclusive, of subsection (a) of this section. No person other than a common or contract carrier shall knowingly transport cigarettes to any person in this state who is not a person described in subdivisions (1) to (3), inclusive, of subsection (a) of this section.
- (c) When a person engaged in the business of selling cigarettes ships or transports or causes to be shipped or transported any cigarettes to any described person in this state, other than in the cigarette manufacturer's original container or wrapping, the container or wrapping shall be plainly and visibly marked with the word "cigarettes". Any person engaged in the business of selling cigarettes who ships or causes to be shipped any cigarettes to any described person in this state (1) shall require, as a condition of delivery, [that] the customer who is receiving the cigarettes [shall] to sign an acknowledgment of receipt and provide proper proof of age, and (2) may not sell such cigarettes to such customer unless such proof of age is provided. For purposes of this subsection, "described person" means a person described in subdivisions (1) to (3), inclusive, of subsection (a) of this section.
- (d) Whenever any cigarettes have been or are being shipped or transported in violation of this section, such cigarettes are declared to

be contraband goods and the confiscation, search and forfeiture provisions of section 12-305 shall apply.

- (e) Any person who violates the provisions of this section shall be guilty of a class A misdemeanor and, for a second or subsequent violation, shall be guilty of a class [D] \underline{C} felony.
- (f) The Commissioner of Revenue Services may impose a civil penalty of not more than [five] ten thousand dollars for each violation of this section. For purposes of this subsection, each shipment or transport of cigarettes shall constitute a separate violation. The Attorney General, upon request of the commissioner, may bring an action in the superior court for the judicial district of Hartford to collect such civil penalty and for any injunctive or equitable relief. In any action brought by the Attorney General to enforce the provisions of section 12-285b or this section, the state shall be entitled to recover, when it is the prevailing party, the costs of investigation, expert witness fees, costs of the action, and reasonable attorneys' fees.
- Sec. 2. Subsection (e) of section 12-286 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective July* 44 1, 2018):
 - (e) (1) Any person who knowingly sells, offers for sale or possesses with intent to sell any cigarettes, without a license as provided in this chapter, shall be fined not more than [five hundred] one thousand dollars or imprisoned for not more than [three] six months, or both, for each offense. Each day of such unauthorized operation may be deemed a separate offense. The provisions of this subdivision shall not apply to any person whose dealer's license has expired, provided the period of operation without such license is not more than ninety days after the date of expiration.
 - (2) Any person who knowingly sells at retail, offers for sale at retail or possesses with intent to sell at retail any taxed tobacco products, as defined in section 12-330a, without a dealer's license as provided in this chapter, shall be fined not more than [five hundred] one thousand

dollars or imprisoned for not more than [three] <u>six</u> months, or both, for each offense. Each day of such unauthorized operation may be deemed a separate offense. The provisions of this subdivision shall not apply to any person whose dealer's license has expired, provided the period of operation without such license is not more than ninety days from the date of expiration.

- (3) Any person whose dealer's license has expired and who knowingly sells at retail, offers for sale at retail or possesses with intent to sell at retail any cigarettes or taxed tobacco products, as defined in section 12-330a, where such person's period of operation without such license is not more than ninety days from the date of expiration of such license, [shall have committed an infraction and] shall be fined [ninety] three hundred fifty dollars.
- 91 Sec. 3. Section 12-304 of the general statutes is repealed and the 92 following is substituted in lieu thereof (*Effective July 1, 2018*):
 - (a) (1) No [distributor shall sell, and no other] person shall sell, offer for sale, display for sale, transport for sale or possess with intent to sell, any cigarettes (A) which do not bear stamps evidencing the payment of the tax imposed by this chapter, or (B) the stamping of which is prohibited by subsection (b) of section 12-302 or subsection (b) of section 12-303, provided a licensed dealer may keep on hand, at the location for which such dealer's license is issued, unstamped cigarettes, other than cigarettes, the stamping of which is prohibited by subsection (b) of section 12-303, for a period not exceeding twenty-four hours. Any unstamped cigarettes in the possession of a licensed dealer shall be presumed to have been held by such dealer for more than twenty-four hours unless proof is shown to the contrary.
 - (2) Except as provided in subdivision (3) of this subsection, any person who knowingly violates any provision of subdivision (1) of this subsection shall be [fined not more than one thousand dollars or imprisoned not more than one year or both] subject to the following penalties: (A) If the violation involves one thousand or fewer unstamped cigarettes, such person shall be fined not more than one

thousand dollars or imprisoned for not more than one year, or both;

- 112 (B) if the violation involves more than one thousand but fewer than
- twenty thousand unstamped cigarettes, such person shall be fined not
- more than one dollar per cigarette or imprisoned for not more than one
- 115 year, or both; and (C) if the violation involves twenty thousand or
- more unstamped cigarettes, such person shall be fined not more than
- one dollar fifty cents per cigarette or imprisoned for not more than five
- 118 years, or both.
- 119 (3) Any licensed dealer who knowingly violates any provision of
- subdivision (1) of this subsection [shall have committed an infraction
- and] shall be fined [ninety] three hundred fifty dollars, provided (A)
- the quantity of unstamped cigarettes in the possession of such dealer
- does not exceed [six hundred] one thousand cigarettes, and (B) it is
- such dealer's first violation of the provisions of this subsection.
- (b) [(1)] Any person, whether or not previously convicted of a
- violation of any provision of this section, [who possesses, transports
- for sale, sells or offers for sale twenty thousand or more cigarettes, (A)
- 128 subject to the tax imposed by this chapter in any unstamped or
- 129 unlawfully packaged stamped packages, or (B) the stamping of which
- is prohibited by subsection (b) of section 12-302 or subsection (b) of
- 131 section 12-303, and (2) any person, whether or not previously
- convicted of violation of any provision of this section,] who wilfully
- 133 attempts to evade the taxes imposed by this chapter or the payment
- thereof on twenty thousand or more cigarettes, shall be guilty of a class
- 135 [D] <u>C</u> felony.
- Sec. 4. Subsection (b) of section 12-306b of the general statutes is
- 137 repealed and the following is substituted in lieu thereof (Effective July
- 138 1, 2018):
- (b) Any person who wilfully delivers or discloses to the
- 140 commissioner or [his] the commissioner's authorized agent any list,
- report, account, statement, or other document, known by [him] such
- 142 person to be fraudulent or false in any material matter, shall, in
- addition to any other penalty provided by law, be guilty of a class [D]

144 <u>C</u> felony. No person shall be charged with an offense under both

- subsections (a) and (b) of this section in relation to the same tax period
- but such person may be charged and prosecuted for both such offenses
- 147 upon the same information.
- Sec. 5. Subsection (a) of section 12-314 of the general statutes is
- repealed and the following is substituted in lieu thereof (Effective July
- 150 1, 2018):
- 151 (a) (1) The sale of cigarettes other than in an unopened package
- 152 containing twenty or more cigarettes originating with the
- manufacturer [which] that bears the health warning required by law is
- 154 prohibited. Any cigarettes sold other than as specified under this
- 155 subdivision shall be deemed contraband and shall be subject to
- 156 confiscation.
- 157 (2) If the Commissioner of Revenue Services finds, after a hearing,
- that any [dealer or distributor] person has violated the provisions of
- 159 this subsection, said commissioner may assess such person a civil
- penalty of [fifty] one hundred fifty dollars for a first offense, [two
- 161 hundred fifty] five hundred dollars for a second offense and [five
- hundred] one thousand dollars for a third or subsequent offense. Such
- penalty may be in addition to any other penalty provided by law,
- including, but not limited to, the suspension or revocation, if such
- person is a licensed dealer or distributor, of [the] such license [of such
- dealer or distributor] pursuant to section 12-295. Any person aggrieved
- by any action of said commissioner pursuant to this subsection may
- take an appeal of such action as provided in sections 12-311 and 12-
- 169 312.
- 170 Sec. 6. Section 12-330f of the general statutes is repealed and the
- following is substituted in lieu thereof (*Effective July 1, 2018*):
- 172 (a) Any person, other than a licensed distributor or a licensed
- 173 unclassified importer, who knowingly manufactures, purchases,
- imports, receives or acquires any tobacco products upon which no tax
- has been paid in accordance with the provisions of this chapter, shall

be fined not more than [five hundred] seven hundred fifty dollars or

- imprisoned for not more than three months, or both, for each offense.
- Each day of any such unauthorized operation may be deemed a separate offense.
- 180 (b) No distributor or unclassified importer shall sell, offer for sale, 181 display for sale or possess with intent to sell, any tobacco products 182 upon which no tax has been paid in accordance with the provisions of 183 this chapter, provided a licensed distributor or unclassified importer 184 may keep on hand, at the location for which [his] such distributor's or 185 importer's license is issued, tobacco products upon which no such tax 186 has been paid for a period not exceeding forty-one days. Any tobacco 187 products in the possession of a distributor or unclassified importer 188 shall be presumed to have been held by [him] such distributor or 189 importer for more than forty-one days unless proof is shown to the 190 contrary. Any person who knowingly violates any provision of this
 - (c) (1) Any person, whether or not previously convicted of violation of any provision of this section, who transports for sale, sells or offers for sale tobacco products upon which a tax of two thousand five hundred dollars or more would be due under the provisions of this chapter, but upon which no tax has been paid, and (2) any person, whether or not previously convicted of violation of any provision of this section, who wilfully attempts to evade the taxes imposed by this chapter, or the payment thereof on tobacco products upon which a tax of two thousand five hundred dollars or more would be due but upon which no tax has been paid, shall be guilty of a class [D] C felony.

subsection shall be fined not more than one thousand dollars or

imprisoned not more than one year, or both.

- Sec. 7. Section 12-330j of the general statutes is repealed and the following is substituted in lieu thereof (*Effective July 1, 2018*):
 - (a) Any person required under this chapter to pay any tax or to make a report, keep any records or supply any information, who wilfully fails to pay such tax, make such report, keep such records, or supply such information, at the time required by law or regulations,

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shall, in addition to any other penalty provided by law, be fined not more than one thousand dollars or imprisoned not more than one year, or both. Notwithstanding the provisions of section 54-193, no person shall be prosecuted for a violation of the provisions of this subsection committed on or after July 1, 1997, except within three years next after such violation has been committed. As used in this section, "person" includes any officer or employee of a corporation or a member or employee of a partnership under a duty to pay such tax, to make such report, keep such records or supply such information.

- (b) Any person who wilfully delivers or discloses to the commissioner or [his] the commissioner's authorized agent any list, report, account, statement, or other document, known by [him] such person to be fraudulent or false in any material matter, shall, in addition to any other penalty provided by law, be guilty of a class [D] C felony. No person shall be charged with an offense under both subsections (a) and (b) of this section in relation to the same tax period but such person may be charged and prosecuted for both such offenses upon the same information.
- Sec. 8. Subsection (a) of section 53-394 of the 2018 supplement to the general statutes is repealed and the following is substituted in lieu thereof (*Effective July 1, 2018*):
- (a) "Racketeering activity" means to commit, to attempt to commit, to conspire to commit, or to intentionally aid, solicit, coerce or intimidate another person to commit any crime which, at the time of its commission, was a felony chargeable by indictment or information under the following provisions of the general statutes then applicable: (1) Sections 53-278a to 53-278f, inclusive, relating to gambling activity; (2) chapter 949a, relating to extortionate credit transactions; (3) chapter 952, part IV, relating to homicide; (4) chapter 952, part V, relating to assault, except assault with a motor vehicle as defined in section 53a-60d; (5) sections 53a-85 to 53a-88, inclusive, relating to prostitution; (6) chapter 952, part VII, relating to kidnapping; (7) chapter 952, part VIII, relating to burglary, arson and related offenses; (8) chapter 952, part

IX, relating to larceny, robbery and related offenses; (9) chapter 952, part X, relating to forgery and related offenses; (10) chapter 952, part XI, relating to bribery and related offenses; (11) chapter 952, part XX, relating to obscenity and related offenses; (12) chapter 952, part XIX, relating to coercion; (13) sections 53-202, 53-206, 53a-211 and 53a-212, relating to weapons and firearms; (14) section 53-80a, relating to the manufacture of bombs; (15) sections 36b-2 to 36b-34, inclusive, relating to securities fraud and related offenses; (16) sections 21a-277, 21a-278 and 21a-279, relating to drugs; (17) section 22a-131a, relating to hazardous waste; (18) chapter 952, part XXIII, relating to money laundering; (19) section 53a-192a, relating to trafficking in persons; or (20) [subdivision (1) of] subsection (b) of section 12-304, as amended by this act, or section 12-308, relating to cigarettes, or subsection (c) of section 12-330f or subsection (b) of section 12-330j, relating to tobacco products.

This act shall take effect as follows and shall amend the following sections:				
Section 1	July 1, 2018	12-285c		
Sec. 2	July 1, 2018	12-286(e)		
Sec. 3	July 1, 2018	12-304		
Sec. 4	July 1, 2018	12-306b(b)		
Sec. 5	July 1, 2018	12-314(a)		
Sec. 6	July 1, 2018	12-330f		
Sec. 7	July 1, 2018	12-330j		
Sec. 8	July 1, 2018	53-394(a)		

FIN Joint Favorable Subst.

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 19 \$	FY 20 \$
Resources of the General Fund	GF - Potential	Less than	Less than
	Revenue Gain	20,000	20,000
Department of Revenue Services	GF - Revenue	Minimal	Minimal
_	Gain		

Note: GF=General Fund

Municipal Impact: None

Explanation

The bill increases various cigarette sale violations and is anticipated to result in a revenue gain of less than \$20,000 annually from fines beginning in FY 19. In FY 17, 76 violations resulted in total fine revenue of approximately \$17,000.

The bill also results in a potential minimal cigarette and tobacco tax revenue gain to the extent that the increased penalties result in a reduction in illegal cigarette and tobacco sales.

The Out Years

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation.

OLR Bill Analysis sHB 5429

AN ACT CONCERNING THE DEPARTMENT OF REVENUE SERVICES' RECOMMENDATIONS FOR INCREASED PENALTIES FOR CERTAIN CIGARETTE AND TOBACCO TAX VIOLATIONS.

SUMMARY

This bill increases civil and criminal penalties for various offenses related to cigarette and tobacco products sales.

Among other things, the bill increases, from a class D to a class C felony, the penalties for:

- 1. repeat violations of the cigarette shipment or transport law;
- 2. willful attempt to evade cigarette taxes or failing to pay the taxes on 20,000 or more cigarettes;
- 3. illegal sales of untaxed tobacco products that would be taxed at least \$2,500 and willful attempt to evade tobacco products taxes or failing to pay tobacco product taxes of \$2,500 or more; and
- 4. willful delivery or disclosure to the Department of Revenue Services (DRS) of fraudulent or false cigarette or tobacco products tax documents.

By law, a class D felony is punishable by up to five years in prison, a fine of up to \$5,000, or both, while a class C felony is punishable by up to 10 years in prison, a fine of up to \$10,000, or both.

The bill increases penalties for selling (1) cigarettes or taxed tobacco products without a DRS license, (2) untaxed cigarettes or tobacco products, and (3) improperly packaged cigarettes. It also (1) expands the definition of racketeering activity under the Corrupt Organizations and Racketeering Act (CORA) to include willfully attempting to evade

cigarette taxes or failing to pay the taxes on 20,000 or more cigarettes and (2) removes from the definition possessing, transporting for sale, selling, or offering for sale 20,000 or more cigarettes in certain stamped or illegally stamped packages.

EFFECTIVE DATE: July 1, 2018

§ 1 — ILLEGALLY SHIPPING OR TRANSPORTING CIGARETTES

The bill increases, from a class D to a class C felony, the penalty for second or subsequent violations of the cigarette shipping and transporting law. The law:

- 1. prohibits companies that sell cigarettes from shipping them to anyone in Connecticut who is not (a) a state-licensed cigarette distributor or dealer, (b) an export warehouse proprietor or customs bonded warehouse operator, or (c) a local, state, or federal government employee, officer, or agent acting within his or her official duties;
- 2. prohibits common or contract carriers or anyone else from knowingly delivering cigarettes to a residence or to someone in Connecticut they reasonably believe is not one of the entities authorized to receive them;
- 3. requires sellers to plainly and visibly mark packages with the word "cigarettes" when they do not ship them in the cigarette manufacturer's original container or wrapping; and
- 4. requires sellers shipping cigarettes to make delivery to an authorized recipient conditional on the recipient's signing an acknowledgement of receipt and presenting proper proof of age.

By law, unchanged by the bill, a first violation of these provisions is a class A misdemeanor.

The bill also increases, from \$5,000 to \$10,000, the maximum civil penalty the DRS commissioner may impose for each shipment or delivery of cigarettes that violates these provisions.

§ 2 — SALE OF CIGARETTES OR TAXED TOBACCO PRODUCTS WITHOUT A DRS LICENSE

The bill increases the penalties for selling, offering to sell, or possessing with intent to sell cigarettes or taxed tobacco products without a license from DRS. Taxed tobacco products include snuff, cigars, cheroots, pipe tobacco, and similar products.

Under current law, the penalty for each knowing violation is a fine of up to \$500, up to three months in jail, or both. The bill increases the penalty to a fine of up to \$1,000, up to six months in jail, or both. As under existing law, each day of unauthorized operation may be counted as a separate offense.

In the case of a cigarette dealer who operates for up to 90 days after his or her license expires, the bill increases the penalty from an infraction, with a \$90 fine, to a \$350 fine.

§ 3 — SALE OF UNSTAMPED CIGARETTES

Under current law, it is generally illegal to sell, offer or display for sale, or possess with intent to sell cigarettes without the required Connecticut tax stamp. The bill additionally makes it illegal to transport cigarettes for sale under these same conditions.

Under current law, the penalty for any knowing violation of the stamp requirements is a fine of up to \$1,000, up to a year in prison, or both (except for certain licensed dealers, as described below). The bill increases the penalty for knowing violations involving more than 1,000 cigarettes. Under the bill, the penalty is:

- 1. a fine of up to \$1 per cigarette, up to a year in prison, or both, if the violation involves from 1,001 to 19,999 unstamped cigarettes and
- 2. a fine of up to \$1.50 per cigarette, up to five years in prison, or both, if the violation involves 20,000 or more unstamped cigarettes.

Under current law, the penalty for possessing, transporting for sale,

selling, or offering for sale 20,000 or more cigarettes (1) in unstamped or illegally packaged stamped packages or (2) that may not legally be stamped, is a class D felony, punishable by a fine of up to \$5,000, up to five years in prison, or both.

The bill also increases, from a class D to a class C felony, the penalty for willfully attempting to evade cigarette taxes or failing to pay the taxes on 20,000 or more cigarettes.

§§ 4 & 7 — CIGARETTE OR TOBACCO PRODUCTS TAX FRAUD

The bill increases, from a class D to a class C felony, the penalty, under both the cigarette and tobacco products tax laws, for willfully delivering or disclosing to the DRS commissioner any list, report, account, statement, or other document known to be fraudulent or false in any material matter. This penalty is in addition to any other penalty the law provides.

§ 5 —CIGARETTE PACKAGING VIOLATIONS

The law prohibits the sale of cigarettes in any form other than in sealed packages of 20 or more that bear the federally required health warning (i.e., loose cigarettes). The bill increases the civil penalty for violations of this law from (1) \$50 to \$150 for a first offense, (2) \$250 to \$500 for a second, and (3) \$500 to \$1,000 for a third or subsequent offense. It also subjects any violators, rather than just dealers and distributors, to the penalty. But as under existing law, dealers and distributors who violate these provisions are subject to license suspension or revocation.

The bill also deems any cigarettes sold in violation of this law to be contraband and subject to confiscation.

§ 6 — SALE OF UNTAXED TOBACCO PRODUCTS

Under current law, anyone, other than a licensed distributor or importer, who knowingly manufactures, buys, imports, receives, or acquires any untaxed tobacco products is subject to a fine of up to \$500, up to three months in jail, or both, for each offense. The bill increases the fine to \$750.

The bill also increases, from a class D to a class C felony, the penalty for (1) transporting for sale, selling, or offering for sale untaxed tobacco products that would be taxed at least \$2,500 or (2) willfully attempting to evade the tobacco products tax or failing to pay the taxes on products that would be taxed at least \$2,500.

§ 8 — RACKETEERING ACTIVITY

The bill expands the definition of racketeering activity under CORA to include willfully attempting to evade cigarette taxes or failing to pay the taxes on 20,000 or more cigarettes. In doing so, it subjects a person or entity that engages in a pattern of this violation to prosecution under CORA. The bill also removes from the definition of racketeering activity possessing, transporting for sale, selling, or offering for sale 20,000 or more cigarettes (a) in any unstamped or illegally packaged stamped packages or (b) that the law prohibits from bearing a tax stamp (see § 3 above).

CORA subjects violators to (1) one to 20 years in prison, a fine of up to \$25,000, or both; (2) forfeiture of property acquired, maintained, or used in violation of CORA, including profits, appreciated value, and sale proceeds; and (3) forfeiture of any interest in, security of, claim against, or property or contractual right of any kind affording a source of influence over any enterprise the violator established, operated, controlled, conducted, or participated in to violate CORA. Violators are also subject to the fines and penalties associated with the underlying crimes.

COMMITTEE ACTION

Finance, Revenue and Bonding Committee

Joint Favorable Substitute Yea 51 Nay 0 (04/05/2018)